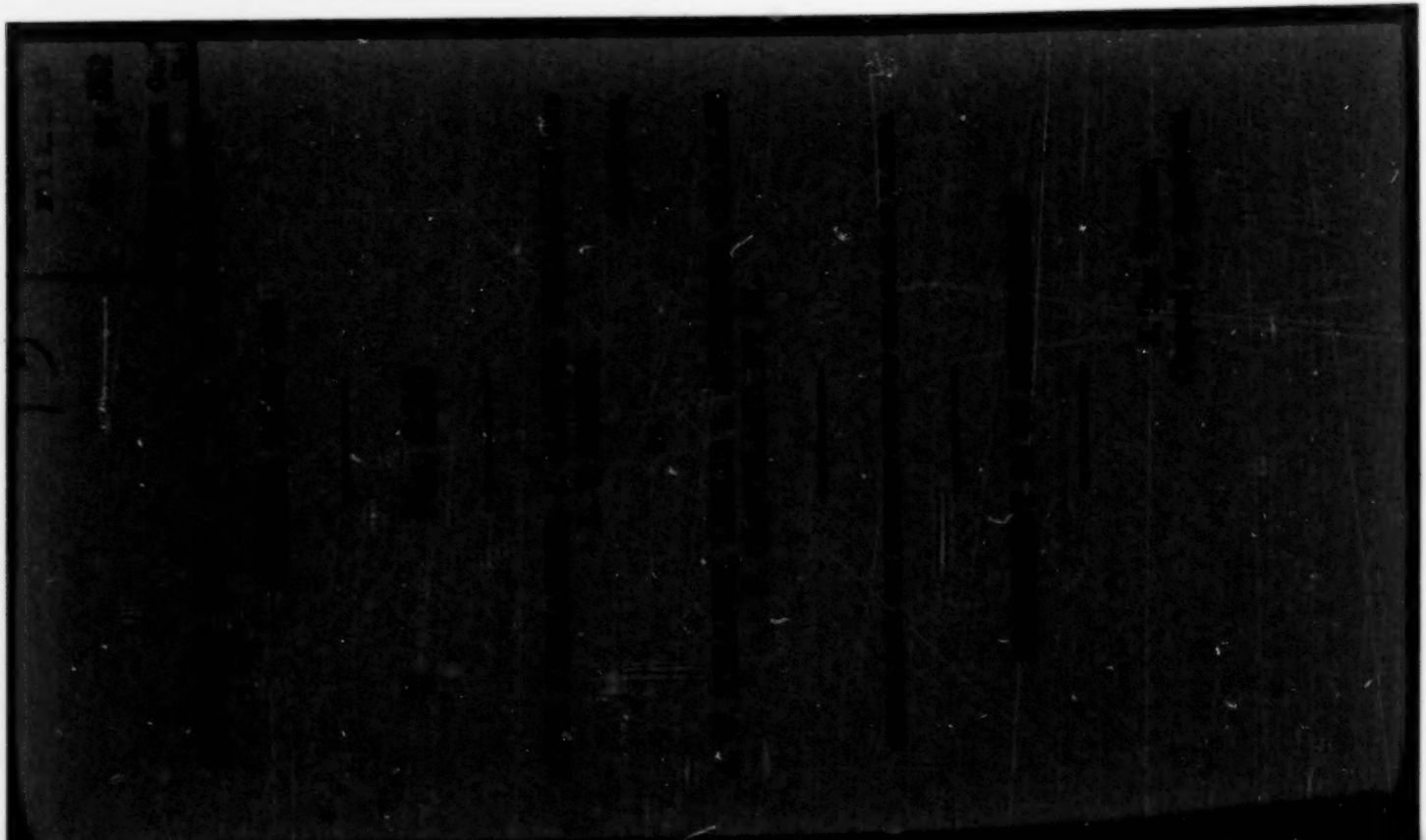

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 220

JOHN FERNANDEZ, ET AL.,

Appellants,

vs.

A. W. KELLNER, ET AL., CONSTITUTING THE FLORIDA STATE BOARD OF DENTAL EXAMINERS

STATEMENT AS TO JURISDICTION PURSUANT TO RULE 12 AND RULE 46 (2) OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES.

This is an appeal from three separate final judgments, entered in three different cases by the Supreme Court of Florida. These three cases having been by order of said Supreme Court of Florida allowed to be consolidated for the purpose of this Appeal.

The order appealed in each case is a final judgment denying certiorari from the Supreme Court of Florida to the Trial Court, together with the order denying rehearing in each case.

The Trial Court in each case is the Circuit Court of Hillsborough County, Florida, in Chancery.

(a) U. S. Statutes Sustaining Jurisdiction.

Title 28, Section 1257, U. S. Code Annotated (2) provides the basic law for this Appeal from the State Court; to-wit:

Where the validity of a State Statute has been drawn in question, and the State Court has held it valid under the Federal Constitutional Law; which (Federal Constitution) it (The State Statute) is charged in each of the three cases involved, to have violated.

Title 28, Section 2104 U. S. C. A. provides that such appeals shall be taken as from U. S. District Court, et cetera.

Ry. Express Agency v. *Virginia,* 282 U. S. 440, 75 L. Ed. 450

In the setting of Sec. 1257 (2), an appeal will lie, even though the State Court is not explicit in its ruling touching the statute whose constitutionality is under attack.

Largent v. *Texas,* 318 U. S. 418, 87 L. Ed. 873;

Dahnke-Walker Milling Co. v. *Bondurant,* 257 U. S. 282, 66 L. Ed. 239 and note

(b) The Federal Constitutional Provisions alleged to be violated by said State law are:

Article 1, Section 10

No State shall pass * * * any bill of attainder.

Amendment 14, Section 1.

Nor shall any State deprive any person of * * * liberty or property, without "due process" of law; nor deny to any person within its jurisdiction, the equal protection of the laws.

(c) The State statute whose validity is drawn in question as being contrary to said articles and sections of the Federal Constitution, and which was held by the State Supreme Court in the instant cases, not to violate said sections and articles.

Sec. 466.29 Florida Statutes Annotated 1949:

> When it appears to the board that any person is practicing dentistry or dental hygiene in this state without a license, license certificate or renewal certificate, the board may, upon application to the proper court, be granted a temporary injunction directed to such person, enjoining further practice of dentistry or dental hygiene by him or her until such time as he or she shall furnish satisfactory proof that he or she has been duly licensed to practice dentistry or dental hygiene in this state, and that such license is still in full force and effect. A copy of the records certified by the secretary-treasurer, or a certificate of such officer showing that such person is not the then owner and holder of a valid license to practice dentistry or dental hygiene, shall be sufficient showing by the board that such person is practicing dentistry or dental hygiene in contravention of this chapter, and upon such showing by the Board, temporary injunction shall be issued by the court. If within the time set by the court such person has not satisfactorily proved that he or she is the then holder of a valid license, license certificate or renewal certificate to practice dentistry or dental hygiene, permanent injunction shall be issued. Such permanent injunction may be dissolved upon presentation to the court issuing same of a certificate from the secretary-treasurer of the board stating that the person enjoined is now the holder of a valid license, license certificate or renewal certificate. (Comp. Sec. 29, Ch. 20240, 1941).

(d) The judgments here involved and their dates.

The dates of the judgments rendered by the *lower* court of original jurisdiction and copies thereof, are set out in Paragraph (*h*) following:

The judgments and their dates of the *Supreme Court* of Florida, here involved, are set out in the Petition for this appeal, but we will repeat their dates here:

John Fernandez Judgment—December 7, 1951.
John Fernandez Denial of Rehearing—Jan. 15, 1952.
L. V. Baker Judgment—November 2, 1951.
L. V. Baker Denial of Rehearing—Jan. 15, 1952.
J. Manuel Fernandez Judgment—November 2, 1951.
J. Manuel Fernandez Denial of Rehearing—Jan. 17, 1952.

(e) Dates of filing application and petition for this appeal to the Supreme Court of Florida.

The application for this appeal allowance, to the Supreme Court of Florida, is dated January 19, 1952, and a copy of same, together with the order of allowance, and a later order extending the time for the appeal, are attached to our Petition for appeal to the Supreme Court of the United States, of which this is a part.

The date when this Petition for Appeal is presented in the Supreme Court of Florida for filing and transmittal to the Supreme Court of the United States, is Apr. 17, 1952.

(f) Why judgments are final.

The three judgments entered by the Supreme Court of Florida, from which this appeal is taken, in the three cases, here consolidated, are final judgments for the following reasons:

(1) *The John Fernandez case judgments*, entered by the Trial Court, is a judgment sentencing the defendant to jail

for three months (Appendix Exhibit 3), after an order (Appendix Exhibit 2), holding him to be in contempt of an order (Appendix Exhibit 1), *enjoining* him from *practicing dentistry.*

The order of the Trial Court enjoining the defendant from practicing dentistry, was a final order in that it *terminated* the issue of "alleged illegal practice of dentistry" (Appendix Exhibit 1).

The contempt judgment is final in that it *adjudicated* the defendant to be in *contempt finally and conclusively* (Appendix Exhibit 2). The penalty order is final as punishment for the alleged contempt. (Appendix Exhibit 3.)

The judgment of the Supreme Court of Florida, from which this appeal is taken, in the John Fernandez case, is a final denial of review of these three lower court holdings. (Petition for Appeal to United States Supreme Court Exhibit #1.)

(2) *The Baker judgment*, entered by the lower court, was a final injunction against the practice of dentistry by this defendant (Appendix Exhibit 4); and the Supreme Court judgment finally denied certiorari review thereof. (Petition for Appeal to United States Supreme Court Exhibit #2.)

(3) *The J. Manuel Fernandez judgment*, entered by the lower court, was a final injunction against the practice of dentistry by this defendant (Appendix Exhibit 5); and the Supreme Court judgment finally denied certiorari review thereof (Petition for Appeal to United States Supreme Court Exhibit #3).

(g) The Fundamental Constitutional Federal Questions.

The fundamental Constitutional Federal questions are the same in each of the instant consolidated cases, and are questions of "due process", or the absence of "due proc-

ess", under a State Law of "attainder"; (Bill of pains and penalties) and want of "due process"; and double prosecution, and entrapment. *Fundamental constitutional questions may be raised for the first time in the Appellate Court.*

Parker v. *Town of Callahan*, 115 Fla. 226—156 So. 334;
Town of Monticello v. *Finlayson*, 156 Fla. 568—23 So. 2d 843.

The questions presented by those cases are fundamental, from a constitutional viewpoint.

(h) The facts giving rise to such questions. (Federal Constitutional questions.)

(1) In the John Fernandez case.
(2) In the Baker case.
(3) In the Manuel Fernandez case.

These three suits are in equity; there being the recognized common law distinction in Florida between chancery and law jurisdiction

An original Bill of Complaint is filed in each of these three cases; purportedly under Section 466.29 F.S.A. 1949, being the same Section quoted in Paragraph (*c*) above.

The Bill of Complaint in each of these cases purports to be authorized by this cited Section (466.29).

(1) *The John Fernandez case* proceeded to the stage where, after the issuance of an injunction order against him, enjoining him from "practicing dentistry" (A copy of this order is attached, dated January 27, 1949), and identified as Appendix Exhibit #1). Two and one-half years later he was cited for contempt under the charge of having violated this injunction *by practicing dentistry;* he was found guilty under this citation; two different orders were made in the trial court; one, adjudging contempt. (A copy of this order adjudging him in contempt, dated June 29, 1951, is attached, identified as Appendix Exhibit #2.)

One, imposing a penalty (A copy of the order sentencing him to three months in Hillsborough County Jail for such contempt, dated July 11, 1951, is attached and identified as Appendix Exhibit #3).

These three orders are final adjudications concerning; first, the practice of dentistry; second, the alleged contempt; and third, the punishment, in *the John Fernandez case.*

(2) *In the Baker case, only* the permanent injunction against practicing dentistry was issued by the lower court; and it is the order of the lower court for this injunction, dated June 22, 1951, containing a permanent injunction against the practice of dentistry by Baker, which is appealed to the Supreme Court of Florida; and this is the order in that case, to which the Supreme Court of Florida denied certiorari.

This injunction order, against Baker, enjoined him from the practice of dentistry permanently; and from maintaining any dental chair or dental office equipment for the carrying on of dental work, that can only be done by a licensed dentist, under the Provision of Chapter 466 Florida Statutes Annotated. (A copy of this order is attached and identified as Appendix Exhibit #4.)

(3) *In the J. Manuel Fernandez case, only* the injunction order against practicing dentistry has been issued. The lower court's order in this J. Manuel Fernandez case, is dated June 22, 1951; the same date as the Baker order, and is the same order as was issued in the Baker case, and is a permanent order similar to the Baker order, against Manuel Fernandez, with respect to the practice of dentistry. (A copy of this order is attached and identified as Appendix Exhibit #5.)

Subsequent to the appealing of these three cases, to the Supreme Court of Florida, by certiorari, from the judgments of the Circuit Court of Hillsborough County, Florida,

aforesaid, the Supreme Court of Florida decided the case of—

Peters v. *State Dental Board,* 55 So. 2d 334—dated Oct. 3, 1951.

(A copy of the opinion in this cited case is attached as Appendix Exhibit #6.)

In this cited *Peters* v. *State Dental Board* case, the Supreme Court of Florida, among other things (pertinent to the case at bar), in discussing Section 466.29 F.S.A., said that in the provisions of this Section "the legislature was prosecutor, jury, and judge; and fixed the punishment in the act. The bill of attainder took no account of precedent, rules of procedure, or notice to the victim. The legislature acted without regard to evidence, "due process" or any safeguard to fair trial whatever.

The injunctions in the three cases at bar, were issued in response to this kind of legislative provision in the act complained of.

This decision by the Supreme Court of Florida, gives rise to the constitutional questions of *"due process"*, which we are raising in these three cases now before the Supreme Court of the United States. Both *attainder* and *entrapment* (potential infirmities in the Section 466.29) are pointed out, and given recognition by the Florida Supreme Court in this cited case; however, a few months later this same court declined to enforce or apply such recognition in the three cases, now being submitted to the Supreme Court of the United States; and by such omission, denied the three appellants here, the remedy and relief which these unconstitutional features in the law, recognized by rejecting, would have entitled them to receive; and for which this appeal is being prosecuted to obtain.

The Section in question (466.29), when construed as authority for an injunction against the practice of dentistry in

the broad scope, and meaning of *practice,* as was done in the three cases at bar, to support the injunction orders issued therein; gives to this statute an application which is contrary to "due process", and is using a Court of Equity for criminal prosecution, in abuse of chancery power.

This decision in *Peters* v. *Brown, et al (Florida State Dental Board),* 55 So. 2d, 334, so holds, we believe; however, as pointed out, *in the cases now at bar,* the Supreme Court of Florida omitted to apply the holding, and in so doing, deprived the appellants herein, of the law thereof.

"Due process" is not satisfied if persons involved are not permitted to have the benefit of their reasonable and proper defenses.

State, ex rel Poole v. *Baldwin,* 159 Fla. 165—31 So. 2d 627.

The full control, which the State has in the proceedings of its courts, is subject to the qualification that such procedure must not work a denial of fundamental rights; or conflict with specific and applicable provisions of the Federal Constitution.

West v. *Louisiana,* 194 U. S. 258, 48 L. Ed. 965.

Cited for its note references and thorough discussion.

Section 466.29 F.S.A., when construed as authority for an injunction to enjoin the malpractice of dentistry, rather than "unlicensed operation"; such injunction being issued without a jury trial, by a Court of Equity, is using the chancery court for criminal prosecution.

Section 466.42 of Chapter 466 Florida Statutes Annotated, expressly makes criminal the practice of dentistry without qualifying as a skilled and prepared practitioner. The orders in the case at bar, against the three defendants (appellants), that supposedly only enjoins; actually bars each of them permanently from his laboratory work as a dental

technician; and was so intended, and so framed, in excess of the jurisdiction of the chancery court; and in violation of essential rules of law; and deprives these defendants, and each of them, of liberty and property without "due process", under a statute that can constitutionally be enforced for injunctive relief, only in the case of unlicensed practicing dentist, after an appropriate hearing before the Dental Board.

(h) The appellants have raised the federal constitutional questions in the State courts in the case here presented, so as to be entitled to United States Supreme Court review.

A petition for rehearing was filed in each case, before the Supreme Court of Florida. The grounds of which, in substance, were:

1. In the case of *L. M. Peters* v. *Brown, et al.*, your court recognized law which, when applied in the instant case, would seem to call for an order granting certiorari and quashing the lower court's order here involved.

Petitioner respectfully calls to the court's attention the *Peters* case *supra*, and the opinion; and suggests that the same has been overlooked in the order made, denying certiorari in the instant case.

2. Petitioner respectfully suggests that, the instant case involving as it does constitutional issues and the appellant having originally requested the entire court to decide the same; re-hearing be granted to the end that this case be determined by the whole court; and that the Division deciding the same has overlooked the matter in this paragraph mentioned.

3. In denying the writ in this case it is respectfully submitted that the court overlooked the rule of law that: for every legal wrong there is a remedy, and the procedure to

pursue such remedy is that most convenient to the person wronged; one with a bona fide grievance is entitled to have his grievance considered, and any means provided under the law to do this should be made available to him by the court upon his asking; otherwise a law-suit is an instrument of injustice rather than a means to seek out the truth and administer justice.

Hattenbaugh, et al., v. *Air Line Pilots Assn.*, 52 So. 2d 676 (Fla.).

The assignments of error, from the trial court, made in the three cases, to the order and orders of the trial court, contain the following exceptions before the Supreme Court of Florida:

1. This Chapter (466), in its material parts, deprives the defendants (Appellants here) of liberty and property without due process.

2. This chapter (466) (Including Sec. 466.29), is a deprivation of the constitutional right to be protected against being twice subjected to jeopardy for the same offense.

3. Chapter 466 Florida Statutes Annotated, (Embracing Sec. 466.29) contains in its material parts, delegations of legislative authority, and it invades the constitutional power and realm of jury duty.

4. The orders appealed from, and the several orders charged as erroneously made, are in excess of the jurisdiction of the court, and are proceeded with in violation of essential rules of law; and result in substantial injury to the legal rights of the appellants.

5. Chapter 466 Florida Statutes, does not authorize the proceedings out of which the orders appealed from have arisen; and the said proceedings, as conducted, culminating in the making of the orders appealed from, have no legal authorization.

6. The order appealed from is in excess of the jurisdiction of the court, in that the proceedings upon which the same is predicated, are unauthorized by law, and constitute a misapplication, and proceed from an erroneous interpretation, of the law upon which the same are premised.

(S.) J. Tom Watson,
Attorney for Appellants,
P. O. Box 1198,
522 Stovall Prof. Bldg.,
Tampa, Florida.

The appellants in the cases at bar, make the following assignments of error against the Supreme Court of Florida orders, now being sought to be appealed to the Supreme Court of the United States:

I

The Supreme Court of Florida, in the orders being appealed, disregarded the rules of law, and its decision previously made in the case of *Peters* v. *Brown, et al (Florida State Dental Board),* 55 So. 2d 334, with respect to the Federal questions of "due process", "bill of attainder", and "entrapment", as applicable to the construction that should have been given Section 466.29 F.S.A., in the application of such Section, to the appellant's Federal Constitutional rights to have been granted the order of the Supreme Court of Florida in their certiorari appeal, quashing the lower courts orders, involved in each of the consolidated cases here presented.

II

The Supreme Court of Florida's denial of its certiorari writ, in the three cases at bar; and its refusal to quash the orders of the lower court, appealed to it as unconstitutional orders, as aforesaid; was a denial to the respective appellants, of the only remedy they had against the wrongs

perpetrated by the lower court in its said contempt and injunction orders; thereby making the court an instrument of injustice rather than a forum for seeking out the truth and administering justice, and depriving them of fundamental Federal Constitutional rights.

Hattenbaugh, et al., v. *Air Line Pilots Assn.*, (Fla.) 52 So. 2d—676.

III

The denial of certiorari writ, by the Supreme Court of Florida, in each of the cases at bar, leaves operative against the appellants, a Florida Statute (Sec. 466.29), which has been impliedly interpreted by the Florida Court as violating the Federal Constitution in containing an obvious want of "due process"; and denies to the appellants the relief and remedy to which they are entitled under the Federal Constitution, against its unconstitutional application and enforcement.

IV

The Bill of Complaint in the Baker and Manuel Fernandez cases; and the petition for a citation, under the original Bill of Complaint in the John Fernandez case; are founded upon the affidavit of a paid detective employed at the instance of the Appellee Board, to entrap the appellants into a violation of the Board's dental malpractice law, under the guise of unlicensed qualified practitioners; contrary to the Federal Constitution safeguards against want of due process.

V

To permit the use of injunction, to stop alleged malpractice of dentistry under the provisions of Section 466.29, aforesaid; when the law to which said Section is pertinent, makes such malpractice a crime; is giving consent to double punishment for the same alleged offense, contrary to "due process" concepts in the jurisprudence of all Federal Courts under the Constitution of the United States.

"APPENDIX"

TO

"STATEMENT AS TO JURISDICTION," ETC.

APPENDIX EXHIBIT No. 1

Temporary Injunction and Restraining Order

The above matter having come on for hearing upon the allegations of the sworn bill of complaint filed in the above cause, and the testimony offered before the court, and it being made to appear that the defendant, John Fernandez, has been engaging in the practice of dentistry in the City of Tampa, Florida, illegally, the said John Fernandez not being the owner or holder of any license issued by the Florida State Board of Dental Examiners, and said acts of the said John Fernandez in making and fitting plates and dentures, extracting teeth and otherwise performed by him has been and is in violation of Chapter 466, F.S.A., it is thereupon,

CONSIDERED, ADJUDGED, ORDERED and DECREED that the defendant, John Fernandez, be and he is hereby temporarily enjoined and restrained from making and fitting in the mouth any dentures or plates for any person, and also from extracting teeth, and also from doing or performing any other act which can only be done and performed by a legally licensed dentist, and is enjoined and restrained from engaging in the practice of dentistry, as well as enjoined and restrained from maintaining any dental chair, dental equipment or office equipment for the carrying on or doing work of a licensed dentist.

DONE and ORDERED at Tampa, Florida, this 27th day of January, 1949.

(S.) HARRY N. SANDLER,
Circuit Judge.

APPENDIX EXHIBIT No. 2

Order Adjudging Defendant in Contempt

The above cause coming on for hearing upon the amended application for rule Nisi and the order to show cause based upon said rule, which were duly served upon the defendant, as well as upon the answer to said rule filed by the defendant, and the testimony introduced before the court by both the plaintiffs and the defendant, there being present representing plaintiffs Pat Whitaker of Whitaker Brothers, and also the defendant John Fernandez and his counsel, J. Tom Watson, Esquire, and Julian Diaz, Esquire, and it appearing from the uncontradicted proof and evidence introduced at said hearing that the defendant, since the entry of the injunction in the above styled cause on the 27th day of January, 1949, has willfully violated the terms and provisions of said injunctional order, the defendant committing and performing the acts which he was specifically enjoined and prohibited from doing by said order, in that the uncontradicted evidence introduced at this hearing shows that on April 6th, 9th, 12th and 13th respectively, 1951, the defendant, in violation of law, as well as said injunctional order, did, without any prescription from any legally licensed dentist, but upon the request of the public, take the impression of the gums and mouth of said Charles A. Perelle, and said defendant did further make dentures and plates from said impression so taken, and did adjust and fit the same in the mouth of the said Charles A. Perelle, and did deliver said denture to said Perelle, for which he was paid a fee and compensation; that the said acts which the testimony established without contradiction was done and committed by said defendant were such as can only be done by a legally licensed dentist, and it was further established by the testimony that the defendant does not hold any license or certificate of any kind from the Florida State Board of Dental Examiners, and that all of said acts so done and committed by said defendant, John Fernandez, constituted a violation of the injunctional order entered by this court on the 27th day of January, 1949.

It further appears from the testimony introduced that the defendant has been several times prosecuted and convicted

in the Criminal Court of Record of Hillsborough County, Florida, of practicing dentistry without a license, and notwithstanding said convictions, as well as said injunctional order, the defendant still persists in engaging in the illegal practice of dentistry, and it is made to appear from all of the testimony introduced before the court that the defendant has been and is guilty of willful and obstinate contempt in doing and committing said acts herein enumerated, in violation of said injunctional order.

Counsel for the defendant, at the beginning of said hearing, did demand a jury trial which demand the court overruled and denied, and which demand and ruling, at the request of the defendant's counsel, is carried forward and preserved in this order, it is thereupon,

CONSIDERED, ORDERED, ADJUDGED and DECREED that the request and demand of the defendant, John Fernandez, for a jury trial be and the same is hereby denied.

It is further ADJUDGED, ORDERED and DECEED that the defendant, John Fernandez, is guilty of willful contempt of this court by contemptuously and willfully violating the injunctional order of this court made and entered on the 27th day of January, 1949, and the court does hereby adjudge the said defendant, John Fernandez, to be guilty of willful contempt of said order.

It is further ORDERED that this cause be continued until the 9th day of July, 1951, for final disposition of this contempt proceeding, and the defendant is hereby ordered and required to personally be and appear before this court at 10 o'clock A.M. on said 9th day of July, 1951, for imposition of such sentence or judgment on this adjudication of contempt as the court may at said time impose.

DONE AND ORDERED at Tampa, Florida, this the 29th day of June, 1951.

(S.) HARRY N. SANDLER,
Circuit Judge.

APPENDIX EXHIBIT No. 3

Judgment and Sentence for Contempt

This court did, on the 29th day of June, 1951, enter an order finding and adjudging the defendant John Fernandez to be guilty of willful contempt, and in and by said order did continue said cause until this day for final disposition, and did further order that the defendant John Fernandez be and appear personally before this court on the date of this order for the imposition of such sentence and judgment under said adjudication as this court may at this time impose, and the said John Fernandez being personally present before this court at this time, together with his attorneys, Honorable J. Tom Watson and Honorable Julian Diaz, it is thereupon,

CONSIDERED, ADJUDGED and ORDERED that it is the judgment and sentence of this court that you, John Fernandez, the defendant in the above styled cause, for said willful contempt, of which you have been heretofore adjudged guilty, be imprisioned and incarcerated in the county jail of Hillsborough County, Florida, by the Sheriff of said county for a period of three months,

It is further ORDERED that this sentence shall become effective, and the Sheriff of Hillsborough County, Florida, is hereby commanded to take the said defendant, John Fernandez, in custody under this order on Wednesday, July 25th, 1951.

DONE AND ORDERED at Tampa, Florida, this the 11th day of July, 1951.

(S.) HARRY N. SANDLER,
Circuit Judge.

APPENDIX EXHIBIT No. 4

Order Overruling Motion Filed by Defendant and Granting Temporary Injunction

The above cause coming on this day for hearing upon motion filed by the defendant, designated "Motion for more adequate bill of complaint", which the court treats as a

motion to dismiss, as well as upon application of the plaintiff for temporary injunction, and it appearing that due notice was served upon the defendant of said application, and the defendant being represented at said hearing by his attorneys, J. Tom Watson and Julian Diaz; the court first took up for disposition the motion filed by the defendant, and after argument of counsel for the defendant, as well as Pat Whitaker of Whitaker Brothers, attorneys of record, who was present representing the plaintiff, counsel for the defendant insisting that said motion should also be granted because the bill of complaint was not sworn to, invoking Equity Rule 28, and counsel representing plaintiff stating to the court that it was not the purpose of plaintiffs to make any evidentiary use of the Bill of Complaint at all, but that it was their purpose to offer the sworn testimony of witnesses before the court for the purpose of proving and establishing the allegations of the Bill of Complaint as a basis for the temporary injunction and relief sought in said Bill and would not rely upon the allegations of the Bill as any evidence at all, which counsel for the plaintiffs contended was permissible under an unverified Bill by virtue of Equity Rule 73, and after argument of respective counsel, the court announced that since the plaintiffs were not seeking to make use of the allegations of the Bill of Complaint for any evidentiary purpose, but would offer sworn testimony adduced before the court in support of said allegations, the court announced he was of the opinion Equity Rule 73 was applicable and under such condition it was not necessary for said Bill of Complaint to be verified; however, out of an abundance of precaution, the court announced that he was going to require said Bill of Complaint to be verified by the filing of an affidavit instanter, which counsel for plaintiffs stated would be done, and the court announced that the hearing on the application for temporary injunction would proceed. Thereupon counsel representing the defendant announced that they objected to said proceeding until such affidavit was actually filed and announced they would not participate further in said proceeding, and the court announced that said affidavit could be made and filed later in the day and that he was going to proceed to hear testimony on application for temporary injunction; thereupon counsel

representing the defendant voluntarily withdrew and declined to participate further in said proceeding. Plaintiff, thereupon, called and caused to be sworn a witness in support of the allegations of the Bill of Complaint, and it appearing from such sworn testimony that the defendant has been engaging in the illegal practice of dentistry as alleged in the Bill of Complaint, and the plaintiffs also filed in evidence certificate of the Secretary-Treasurer of Florida State Board of Dental Examiners showing defendant does not hold and there has not been issued to him any certificate or license to practice dentistry, it is thereupon CONSIDERED AND ORDERED that plaintiffs be, and they are hereby allowed to amend the Bill of Complaint by filing an affidavit verifying the allegations of the Bill of Complaint, and said affidavit so filed shall be treated as a part of said Bill of Complaint as though it had been annexed thereto at the time of the filing of said bill.

It is further ORDERED that the motion filed by the defendant, and each ground thereof, is hereby denied and overruled.

It is further ORDERED, based upon the sworn testimony introduced before the court, that defendant, L. V. Baker, be and he is hereby temporarily enjoined and restrained from doing or performing any act which can only be done and performed by a legally licensed dentist, and is enjoined and restrained from engaging in the practice of dentistry, as well as enjoined and restrained from maintaining any dental chair or dental office equipment for the carrying on of dental work that can only be done by a licensed dentist under the provisions of Chapter 466 F.S.A.

DONE AND ORDERED at Tampa, Florida, this 22nd day of June, 1951.

HARRY N. SANDLER,
Circuit Judge.

APPENDIX EXHIBIT No. 5

IN THE CIRCUIT COURT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA, IN CHANCERY

Case No. 88531-C

A. W. KELLNER, LESLIE L. ANDERSON, CHARLES P. CLEVELAND, REEVES F. WELLS, and HOMER V. MCLENDON, as and constituting the Florida State Board of Dental Examiners, *Plaintiffs*,

vs.

J. M. FERNANDEZ, alias J. MANUEL FERNANDEZ, *Defendant*

Filed & Docketed Jun. 22, 1951. Chas. H. Pent, Clerk, By Raymond Vegue, D.C.

Order Overruling Motion Filed by Defendant and Granting Temporary Injunction

The above cause coming on this day for hearing upon motion filed by the defendant, designated "Motion for more adequate bill of complaint" which the court treats as a motion to dismiss, as well as upon application of the plaintiffs for temporary injunction, and it appearing that due notice was served upon the defendant of said application, and the defendant being represented at said hearing by his attorneys, J. Tom Watson and Julian Diaz; the court first took up for disposition the motion filed by the defendant, and after argument of counsel for the defendant, as well as Pat Whitaker of Whitaker Brothers, attorneys of record, who was present representing the plaintiffs, counsel for the defendant insisting that said motion should also be granted because the bill of complaint was not sworn to, invoking Equity Rule 28, and counsel representing plaintiffs stating to the court that it was not the purpose of plaintiffs to make any evidentiary use of the bill of complaint at all, but that it was their purpose to offer the sworn testimony of witnesses before the court for the purpose of proving and establishing the allegations of the bill of complaint as a basis for the temporary injunction and relief sought in said bill of com-

plaint and would not rely upon the allegations of the bill as any evidence at all, which counsel for the plaintiffs contended was permissible under an unverified bill by virtue of Equity Rule 73, and after argument of respective counsel, the court announced that since the plaintiffs were not seeking to make use of the allegations of the bill of complaint for any evidentiary purpose, but would offer sworn testimony adduced before the court in support of said allegations, the court announced he was of the opinion Equity Rule 73 was applicable and under such condition it was not necessary for said bill of complaint to be verified; however, out of an abundance of precaution, the court announced that he was going to require said bill of complaint to be verified by the filing of an affidavit instanter, which counsel for plaintiffs stated would be done and the court announced that the hearing on the application for temporary injunction would proceed. Thereupon counsel representing the defendant announced that they objected to said proceeding until such affidavit was actually filed and announced they would not participate further in said proceeding, and the court announced that said affidavit could be made and filed later in the day and that he was going to proceed to hear testimony on application for temporary injunction; thereupon counsel representing the defendant voluntarily withdrew and declined to participate further in said proceeding. Plaintiffs, thereupon, called and caused to be sworn a witness in support of the allegations of the bill of complaint, and it appearing from such sworn testimony that the defendant has been engaging in the illegal practice of dentistry as alleged in the bill of complaint, and the plaintiffs also filed in evidence certificate of the Secretary-Treasurer of Florida State Board of Dental Examiners showing defendant does not hold and there has not been issued to him any certificate or license to practice dentistry, it is thereupon, CONSIDERED AND ORDERED that plaintiffs be, and they are hereby allowed to amend the bill of complaint by filing an affidavit verifying the allegations of the bill of complaint, and said affidavit so filed shall be treated as a part of said bill of complaint as though it had been annexed thereto at the time of the filing of said bill.

It is further ORDERED that the motion filed by the defendant, and each ground thereof, is hereby denied and overruled.

It is further ORDERED, based upon the sworn testimony introduced before the court, that defendant J. M. Fernandez, alias J. Manuel Fernandez, be and he is hereby temporarily enjoined and restrained from doing or performing ~~any act~~ which can only be done and performed by a legally licensed dentist, and is enjoined and restrained from engaging in the practice of dentistry, as well as enjoined and restrained from maintaining any dental chair or dental office equipment for the carrying on of dental work that can only be done by a licenesd dentist under the provisions of Chapter 466 F.S.A.

DONE AND ORDERED at Tampa, Florida, this 22nd day of June, 1951.

(S.) HARRY N. SANDLER,
Circuit Judge.

APPENDIX EXHIBIT No. 6

IN THE SUPREME COURT OF FLORIDA, JUNE TERM, A. D. 1951, EN BANC

Supreme Court #22,149

L. M. PETERS, *Appellant,*

vs.

COLEMAN T. BROWN, LESLIE L. ANDERSON, A. W. KELLNER, C. P. CLEVELAND and R. F. WELLS as and constituting the FLORIDA STATE BOARD OF DENTAL EXAMINERS, *Appellees*

Opinion Filed October 9, 1951

An Appeal from the Circuit Court for Dade County, Charles A. Carroll, Judge

W. C. Kemp, for Appellant.
Sibley & Davis, for Appellees.

TERRELL, J.

Appellant is a licensed dental technician practicing his profession in Miami, Florida. Appellees, Florida State

Board of Dental Examiners, filed a bill of complaint alleging that appellant was practicing dentistry without a license, contrary to Section 466.29, F.S.A. Without further showing, a temporary restraining order was directed to defendant enjoining him from engaging in any practice having to do with ones dentures. There was an answer to the bill of complaint in which the material allegations thereof were denied. On final hearing the temporary injunction was made permanent. This appeal is from that decree.

Among other things, Section 466.29 F.S.A. provides that a "copy of the record certified by the Secretary-Treasurer, or a certificate of such officer showing that such person is not the then owner and holder of a valid license to practice dentistry or dental hygiene, shall be sufficient showing by the Board that such person is practicing dentistry or dental hygiene in contravention of this Chapter and upon such showing by the Board, temporary injunction shall be issued by the Court."

The temporary injunction was issued in response to this and other provisions of the cited statute, the constitutional validity of which is challenged, but since the case can be disposed of on other ground, we elect, under the well settled rule of this Court, to pretermit any ruling on the question of constitutionality except merely call attention to the fact that the act may come near to transgressing State and Federal Constitutional inhibitions against bills of attainder.

A bill of attainder was an old English practice that substituted conviction and punishment by legislative act in place of judicial punishment after trial and conviction. Some of the Colonial legislatures also indulged in the same practice. Under the bill of attainder the victim was punished without any investigation whatever, he was generally not present at his condemnation and was given no chance to defend himself. The legislature was prosecutor, jury and judge and fixed the punishment in the act. The bill of attainder took no account of precedent, rules of procedure or notice to the victim. The legislature acted without regard to evidence, due process or any safeguard to fair trial whatever. One of the notable instances of a Bill of Attainder enacted by Parliament was that instigated by Lord Somerset, the Prime Minister of Edward Sixth. Being convinced

that his brother was trying to muscle in between him and the King, Somerset decided that he must be destroyed, so he had a bill of attainder brought in the House of Lords, charging his brother with treason. The House of Lords passed the bill without so much as notice to the brother. The House of Commons requested that the brother be heard but the request being denied by the King, the Commons passed the bill of attainder and in due course the attained brother was beheaded. Later the brother who instigated attainder was the victim of the same fate.

The Founding Fathers being conscious of the injustices worked by such procedure, twice inhibited bills of attainder in the Federal Constitution. Our State Constitution contains a like inhibition. I am not so sure that a statute like that under review which commands a court to issue an injunction against one in the exercise of his business on the certificate of an officer that he does not have a valid license and gives him no opportunity to be heard, does not come near violating the inhibition against Bills of Attainder.

Now let us revert to the real issue in the case. The record shows that the main question was whether or not appellant was performing acts that amounted to the practice of dentistry. Appellant flatly denied that he was practicing dentistry, except "such work as he does as a dental technician upon the prescription of a licensed dentist." The case had its genesis in a "suspicion" that appellant was doing acts that amounted to the practice of dentistry. Pursuing that "suspicion" an agent of appellee's hired two witnesses to go to appellant's office to solicit some dental work. He admitted that he ran a model of the dentures for one of the witnesses. The other witness testified that appellant put wax in her mouth and made an impression. Nothing else took place. Both witnesses testified that they were to be paid $100 each for this interview and testimony.

I do not know anything about the line that separates the function of the dentist from that of the dental technician and there is not a shred of evidence here to show where it lies, neither is there any other evidence to support the charge against appellant. In other words, all the evidence against him is purchased evidence, bearing on the controverted fact

of whether he was acting as a dentist or a dental technician. I do not think this court should sanction such apostasy from approved procedure. It is contrary to law and public policy for an officer or member of an administrative board to induce the commission of a wrong or a crime for the purpose of securing a pretext to punish it. In Newman vs. United States, 299 Fed. 128, 131 it was held that decoys may be used to entrap criminals or present opportunity to one to commit crime, but they are not permissible to ensnare the innocent and lawabiding into the commission of a crime.

As to the various phases of bribery, the doctrine of entrapment was abolished by Chapter 26325, Acts of 1949. (Extra-ordinary Session). We are confronted here with a case in equity where the doctrine of clean hands is the counterpart of entrapment in criminal procedure, but the rule in either case springs from decency, good faith, fairness and justice. Equity not only contemplates, it requires fair dealing in all who seek relief at its hands. He that hath committed iniquity shall not have equity, is a well known maxim of equity. All the evidence in this case was induced for pay and if given full face value, it leaves one in doubt whether defendant was doing the work of a dentist or a dental technician. In most cases due process and fair trial turn on procedure. I can think of nothing more disastrous to fair trial or more insolent to the safeguards with which it is protected, than a conviction secured solely on deliberately purchased evidence.

I think the judgment should be reversed, the injunction dissolved and the cause dismissed.

It is so ordered.

Chapman, Thomas and Roberts, JJ., Concur.

Sebring, C. J., Adams and Hobson, JJ., Dissent.